IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4080 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHUPENDRABHAI @ JIVANBHAI MOTILAL KACHIYA PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/07/2000

ORAL JUDGEMENT

1. The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated 4/3/2000 passed by the Commissioner of Police, Vadodara city and he has been

declared as dangerous person.

2. It is a settled principles of law that in order to bring a person within the expression " dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-social Activities Act, 1985, (for short " the Act of 1985 "), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2 (c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression " public order". A distinction has to be drawn between the " law and order " and " maintenance of public order ". A reference may be made of M.J.Shaikh v. M.M.Mehta, Comissioner of Police & Ors. reported in 1995 (2) GLR 1268.

3. Learned counsel for the petitioner has argued that detaining authority taken into consideration one offences registered against the petitioner out of which the last offence registered before Vadodara city Police Station vide C.R.No. 17/2000 7/1/2000 and the order of detention has been passed on 4/3/2000. Therefore, there is a delay of about 2 months in passing the order of detention, and therefore, the petitioner is required to be set at liberty forthwith. In support of the contention, learned counsel for the petitioner has placed reliance on a decision of the case of Elesh Nandubhai Patel v. Commissioner of Police, Ahmedabad city and others, reported in 1997 (1) 381 wherein it is held as under :

> " In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the

petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993 (2)Suppli. SCC 61."

4. Considering rival side contentions, it appears that the offence which has been taken into consideration by the authority is of 7/1/2000 and the order of detention has been passed on 4/3/2000 i.e. after a delay of two months, but the same is not permitted in view of the decision rendered by this Court reported in 1997 (1) G.L.H. 381 (Supra). So the point raised by the petitioner is fully covered by the decision reported in 1997 (1) G.L.H. 381, and therefore, the petitioner is able to succeed only on that point. Therefore, learned counsel for the petitioner has restricted his arguments only on that point and not pressed other points.

5. In view of the aforesaid, the petition is allowed. The impugned order of detention dated 4/3/2000 passed against the detenu is hereby quashed and set aside. The detenu - Bhupendrabhai alias Jivanbhai Motilal Kachiya Patel is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute with no order as to costs.

(R.P.Dholakia, J.)

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